

State of Florida



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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 6, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Springer/Prestwood) *MSB* *OP JS* *ALM*
Office of the General Counsel (Jaeger) *MSB* *JSB*

W 192

RE: Docket No. 080366-GU – Petition for rate increase by Florida Public Utilities Company.

AGENDA: 08/18/09 – Regular Agenda – Appropriate Security for Rates Collected Subject to Refund – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: 02/17/2010 (Final Decision)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080366.RCM.DOC

Case Background

This proceeding commenced on December 17, 2008, with the filing of a petition for a permanent rate increase by Florida Public Utilities Company – Gas Division (FPUC or Company). The Company is engaged in business as a public utility providing distribution and transportation of gas as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the Commission’s jurisdiction. FPUC serves gas customers through two divisions: the Central Florida Division consisting of portions of Seminole, Marion and Volusia Counties, and the South Florida Division consisting of portions of Palm Beach, Broward and Martin Counties. Together, FPUC provides service to over 51,000 residential and commercial customers.

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FPUC requested an increase in its retail rates and charges to generate \$9,917,690 in additional gross annual revenues. FPUC chose to have its petition for rate relief processed under the Proposed Agency Action (PAA) procedure authorized by Section 366.06(4), F.S.

FPUC also requested an interim rate increase in its retail rates and charges. The Commission granted an annual interim rate increase of \$984,054 in Order No. PSC-09-0123-PCO-GU, issued March 3, 2009, for meter readings on or after March 12, 2009, with such rates being protected by a corporate undertaking.

By Proposed Agency Action Order No. PSC-09-0375-PAA-GU (PAA Order), issued May 27, 2009, the Commission proposed to grant a final rate increase of \$8,496,230, for meter readings on or after June 4, 2009. On June 17, 2009, the PAA Order was timely protested by the Office of Public Counsel, who had intervened.

FPUC has implemented the rates approved in the PAA Order and requests that it be allowed to protect such rates, which are subject to refund, through a corporate undertaking. Section 366.06(4), F.S., states that after five months following the commencement date of December 17, 2008, the Utility may implement its requested rates¹ under bond, escrow, or corporate undertaking.

This recommendation addresses what is the appropriate security to protect both the interim rates and the PAA Rates and whether FPUC can support a corporate undertaking to protect these rates which are subject to refund. The Company has collected approximately three months of interim rates. Pursuant to Section 366.04(4), F.S., the Commission must render its final decision by February 17, 2010 (within eight months of the date the protest is filed). Therefore, it appears that FPUC will collect the PAA rates for approximately eight months. The Commission has jurisdiction pursuant to Sections 366.06(4), and 366.071, F.S.

¹ The Commission has interpreted this provision to allow the Company to implement something less than its proposed rates such as the rates approved in the PAA Order (See Order No. PSC-95-1126-FOF-WS, issued September 7, 1995, in Docket No. 941108-WS, In re: Application for a rate increase in Collier County by Florida Cities Water Company – Golden Gate Division).

Discussion of Issues

Issue 1: What is the appropriate security to guarantee the amount collected subject to refund?

Recommendation: The appropriate security to guarantee the funds collected subject to refund by the Gas Division of FPUC is a corporate undertaking guaranteed by FPUC, the consolidated entity. (Springer)

Staff Analysis: FPUC has requested that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed the Company's financial statements to determine if FPUC can support a corporate undertaking in the amount of \$6 million. This amount represents an estimate of the sum of the interim rate increase the Company collected prior to the implementation of rates on June 4, 2009, and the amount of the implemented PAA rate increase FPUC could potentially collect during the pendency of this proceeding. The 2006, 2007, and 2008 financial statements for FPUC's consolidated operations were used to determine the financial condition of the Company.

This analysis shows that FPUC has been deficient with respect to liquidity measures. In addition, the amount potentially subject to refund is more than one and a half times greater than the average annual net income over the three-year review period. However, the weakness in these measures is offset by adequate interest coverage and sufficient equity capitalization. FPUC's interest coverage ratio has been relatively stable over the three-year period and its average equity ratio has been stable at an average of approximately 45 percent. Based on this analysis, staff believes that FPUC has adequate resources to support a corporate undertaking in the amount requested.

For the reasons discussed above, staff recommends that a corporate undertaking of \$6 million is acceptable conditioned upon the written guarantee of the consolidated entity. This brief financial analysis is only appropriate for deciding if the Company can support a corporate undertaking in the amount proposed, and should not be considered a finding regarding staff's position on other issues in this proceeding.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission's final resolution of the Company's requested rate increase. (Jaeger)

Staff Analysis: This docket should remain open pending the Commission's final resolution of the Company's requested rate increase.